
(1969) 05 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 309 of 1968

Pal Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-05-1969

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311

Citation : AIR 1971 P&H 73

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : Rajinder Sachar, for the Appellant; H.S. Gujral, for the Respondent

Judgement

1. The petitioner, Pal Singh, was born on January 13, 1913 and joined service in the Ordinance Factory, Amritsar, as Chargeman on October 23, 1944. On April 1, 1947, the said workshop was transferred to the Punjab Government and at that time the petitioner was working as Assistant Forman. On June 1, 1956, the workshop was transferred to the Railway Department and came to be known as Northern Railway Locomotive Workshop. The petitioner was working as Forman at that time. The transfer from Punjab Government to the Railway Department did not mean a break in the service of the petitioner or any other employee of the said establishment in any manner. The employees of that factory only became the employees of the Railway Department.

2. On April 1, 1963, the petitioner was promoted as Assistant Works Manager was transferred to Amritsar Locomotive Workshop on June 22, 1963. On June 29, 1965, he was transferred to Jagadhri Railway Workshop where he worked as Assistant Works Manager (Wagon Manufacturing and Development) upto March, 1967. Thereafter the petitioner worked as Assistant Works Manager (Wagon Repairs) from March, 1967 to November, 1967. Thereafter the petitioner worked as Assistant Works Manager (Production).

3. The petitioner was confirmed as a Foreman in 1958 and worked as officiating

Assistant Works Manager since 1963. During the period of his service no adverse remark was conveyed to him nor was he given any punishment. No misdemeanours or any other misconduct had been alleged against him.

4. The age of superannuation of an employee in the Railway Department was 55 years till December, 1962. Letter No. 831-E/9-IV(E iv) dated December 6, 1962, was issued by the General Manager (P.) Headquarters Officer, New Delhi, to all Divisional Superintendents and Extra Divisional Officer and others, in which it had been stated that " it has now been decided by the Government of India, with the sanction of the President, that the age of compulsory retirement of railway servants should be 58 years. " This decision was to have effect from December 1, 1962, and para 9 of the letter which is relevant for the decision of this case, is as under :-

"The staff will continue in service as if their retirement age is 58 years instead of 55 years, except that any person who attains the age of 55 years, and is held to be unsuitable (by the competent authority viz. , in the case of posts controlled by Divisions, the Divisional Superintendent ; in the case of posts controlled by Extra Divisions, the Dy: Head of the Department concerned and in the case of posts controlled by the Headquarters office, the head of the Department concerned) at that stage or at any later stage of service between 55 years to 58 years of age, may be dealt within accordance with th instructions given in para 3(iv) above. "

A copy of the letter is Annexure "A-I" to the writ petition.

A clarification of para 9 set out above was made by letter No. E-370 dated February 25, 1963. Two questions were dealt with in this letter, namely :-

"(i) What should be the criteria to declare an employee as unsuitable for being continued in service after the age of 55 years ?

(ii) Whether the cases of these staff should be reviewed annually as in the case of ministerial staff governed by Rule 2046 (2) (a) - RII?"

The decision of the Railway Board with regard to these points was stated to be as under:-

"The appointing authority may require a railway servant to retire after he attains at the age of 55 years with a notice period as provided for in that letter without assigning any reason but this provision is normally to be exercised to weed out unsuitable employees after they have attained the age of 55 years. As such, the appointing authority has to declare an employee as unsuitable for being continued at any time from the date he attains the age of 55 years upto the date of attaining the age of 58 years. The suitability or unsuitability of an employee for being continued in service, in these cases should adjudged on the same principles as are applied to staff governed by Rule 2046 (2) (a)-RII, as detailed in the Board's letter No. E-52. RTI/4/2 dated March 22, 1956, circulated, vide this officer letter No. E-370/G-III, dated 29th March/17th April, 1956.

In regard to Item (ii) above, it is not necessary that the cases should be reviewed annually for the reasons already explained. The competent authority can declare an employee as unsuitable at any time within the range of said age-limits according to the criteria given above. "

A copy of the letter is Annexure A-2 to the writ petition.

These instructions were further modified by the decision of the Railway Board dated July 9, 1964, which was conveyed by the General manager to Works Manager, Jagadhri, and others by means of letter No. 831-E/9-V(Eiv) dated July 27, 1964, a copy of which is Annexure "A-3" to the writ petition. Para 3(iv) of the letter (Annexure A-1) was substituted by the following :-

"Notwithstanding anything contained in the foregoing paragraphs, the appointing authority may require a railway servant to retire on attainment of the age of 55 years or thereafter, on 3 months" notice. This will be in addition to the provisions already contained in the Liberalised Railway Pension Rules, 1950 to retire a railway servant who has completed 30 years qualifying service; the railway servant also may on attainment of the age of 55 years or thereafter voluntarily retire after giving 3 months" notice to the appointing authority. "

In a confidential letter No. FA/Con/Dy:G, dated October 22, 1965, the Financial Advisor and C. A. O. gave the opinion that the cases of all members of the staff who attained the age of 55 are to be reviewed for retention in service upto the age of 58 years and that normally cases so reviewed need not be examined further until the employee reaches the age of 58 years. The review has to be made on the basis of the record of service of the employees. An employee whose service is considered as average according to his service record cannot be refused such retention. Their cases can be reviewed after the expiry of another year. A copy of this letter is Annexure "A-4" to the writ petition. By letter dated 7, 1965, issued by the General Manager (P) it was made clear that the review of the cases for retention of employees who are due to attain the age of 55 years should be examined within six months prior thereto. The review should be conducted by the authority competent to make substantive appointment to the post held by the railway servant concerned. There will only one such review at the age of 55 years but it does not fetter the discretion of the competent authority to retire at any time, any railway servant between the age of 55 and 58, by giving three months" notice prescribed for this purpose.

5. The petitioner attained the age of 55 years on January 12, 1968. On October 31, 1967, the petitioner received a notice from the Secretary, Railway Board, No. E(O)167SR-10/23, dated October 20, 1967, which was by order and in the name of the Railway Board, informing him that -

"In exercise of the powers conferred by Rule 2046(b)-RII of the Indian Railways Establishment Code, Vol. II, it has been decided, in the public interest, to retire Shri Pal Singh, officiating Assistant Works Manager, Northern Railway. Accordingly, a notice of three months is hereby served on him and, on the expiry

of this period, commencing from the date of receipt of this notice, he shall retire from service, unless he is granted, at his request, leave as may be due and admissible to him under the rules, which will not take him beyond the date on which he would have attained the age of 58 years. In that case, he shall retire on the expiry of such leave. " A copy of this notice is Annexure "A-7" to the writ petition.

6. The petitioner alleges that he was called by the C. P. O. on October 23, 1967 and was asked to apply for voluntary retirement and in case he failed to do so, the Railway Administration would serve him with three months' notice to retire. The petitioner thereupon sent a representation to the General Manager (P), Northern Railway, New Delhi, on October 27, 1967, in which he referred to the interview with the C. P. O. on October 23, 1967, and pleaded his case for retention in service after he attained the age of 55 years. A copy of this representation is Annexure "A-6" to the writ petition. On November 10, 1967, the Works Manager, Northern Railway, Jagadhri, was directed to ask the petitioner to send his application for the grant of leave preparatory to retirement. The petitioner sent a reminder on December 8, 1967, for the decision of his representation made on October 27, 1967. A copy of the reminder is Annexure "A-9" to the writ petition. The petitioner did not receive any reply from the respondents to his representation and filed the present writ petition in this Court on January 29, 1968, for quashing the notice dated October 20, 1967 (Annexure "A-7") and for a direction to the respondents to retain the petitioner in service and prayed for staying the operation of the notice till the decision was admitted by the Motion Bench on January 30, 1968 but stay was refused.

7. The return to the writ petition has been filed by Shri N. P. Varma, Senior Personnel Officer I, Northern Railway, New Delhi, in which it has been stated as under :-

"The competent authorities did not consider it desirable to give the petitioner an extension beyond the age of 55 years. The petitioner's case for extension was thoroughly considered by the competent authorities. It is wrong to suggest that the Chief Personnel Officer or any other authority had any ill-will against the petitioner. The confidential record did not justify petitioner's further extension in service. Moreover, the petition cannot claim this extension as a matter of right and that he could be retired on the completion of his age of 55 years without assigning any reasons. The notice was given to the petitioner in terms of Rule 2046(b)R-II in sheer public interest. The allegation of demanding voluntary retirement by the Chief Personnel Officer is not correct. The notice dated October 20, 1967 was received from the Railway Board on October 21, 1967 and it was duly communicated to the petitioner. the allegations suggested to have been made in his letter dated October 27, 1967 are concocted. "

8. The first submission made by the learned counsel for the petitioner is that the impugned notice (Annexure "A-7") is penal because of the use of the words "in public interest" as this phrase casts a stigma on the petitioner. this plea has not

been taken by the petitioner in his long writ petition covering twelve pages. In the writ petition it is averred in para 31 that

"the public interest is not only attracted when it is sought to retire a person beyond the age of 55 years, if he has been found unsuitable. The petitioner's record of service is absolutely free from blame and, therefore, there can be no public interest involved in retiring him earlier than the age of 58 years. Both under these rules and on the principles of equality there is no warrant in the respondents to retire the petitioner earlier than the age of 58 years. "

In para 32 it is said that

"the act of respondents retiring the petitioner is in violation of Art. 311 of the Constitution of India and is also in violation of Arts. 14 and 16 of the Constitution of India. No enquiry having been held before retiring the petitioner, it violates Art. 311 of the Constitution of India. "

In what manner it violates Article 311 of the Constitution has not been indicated.

Article 311 of the Constitution applies only in case of dismissal, removal from service or reduction in rank made by way of punishment. It is nowhere stated in the writ petition that the petitioner has been removed from service by way of punishment. Compulsory retirement after giving three months' notice in terms of the service rules after an employee attains the age of 55 years cannot be said to be removal from service by way of punishment. Article 311 of the Constitution is not, therefore, attracted, I have not permitted the learned counsel for the petitioner to argue that the use of the phrase "in public interest" casts a stigma on the petitioner for the reason that this plea had not been taken in the writ petition and the respondents had no opportunity to meet this allegation. If such a plea had been taken in the writ petition, the respondents might have explained the connotation of the phrase "in the public interest" used in the notice dated October 20, 1967. The learned counsel for the respondents has suggested that the use of the phrase "in public interest" does not cast any stigma on the petitioner because "in public interest" can also mean in the interest of economy and when such a phrase is used after an employee attains the age of 55 years, it does not cast a stigma on him. Since I have not permitted the arguments on this point, I refrain from expressing any opinion on it.

9. The learned counsel for the petitioner has then contended that some unqualified persons were retained in service and were holding the post of Assistant Works Managers while the petitioner had been retired. He has relied upon my judgment in *Rattan Chand v. State of Punjab* 1969 SLR 231 (Punj), in which I had held that the petitioner in that case could not be reverted to the post of Sectional Officer as long as any unqualified Sectional Officer or a Sectional Officer junior to him was officiating as Sub-Divisional Officer. That observation was made in an entirely different set of facts. In that case the petitioner had the right to continue in service and was reduced from a higher rank to a lower rank. That was not a case of compulsory retirement under the service rules.

The learned counsel has then relied upon a judgment of their Lordships of the Supreme Court, in *I.N. Saksena Vs. State of Madhya Pradesh*, in support of his plea that the instructions issued by the Railway Board and the General Manager from time to time became the conditions of the petitioner's service and the petitioner couldn't be retired by giving three months' notice without complying with those instructions. According to the learned counsel the instructions prescribed that an employee with an average service record should be retained in service. That was only the opinion of the Financial Advisor and C. A. O. and were not the instructions issued by any competent authority. Their Lordships of the Supreme Court observed that under Fundamental Rules 56, it was open to the Government to extend the date of retirement of a Government servant if it so desired and the instructions raising the age of superannuation had the effect as if individual orders have been passed in each case till the relevant rule was amended.

The observations of their Lordships, therefore, do not help the learned counsel for the petitioner. It was held by their Lordships that -

"Where an order requiring a Government Servant to retire compulsorily contains express words from which a stigma can be inferred, that order will amount to removal within the meaning of Art. 311. But where there are no express words in the order itself which would throw any stigma on the Government Servant, we cannot delve into Secretariat files to discover whether some kind of stigma can be inferred on such research"

and the mere fact that a Government servant is compulsorily retired before he reaches the age of superannuation does not in itself cast a stigma on him.

The notice of three months issued to the petitioner in the instant case does not cast any stigma on the petitioner and, therefore, cannot amount to removal from service.

10. The last case relied upon by the learned counsel for the petitioner is a judgment of the Division Bench of the Orissa High court, in *Dr. S.N. Ghosal Vs. State of Orissa*,). The petitioner in that case was born on July 1, 1910 and he attained the age of 55 years on June 30, 1965. He was retained in service beyond that age by letter dated June 3, 1965. He was, however, served with three months' notice on July 20, 1967, which was received by him on July 29, 1967. On receipt of this notice he made a representation to the Government on August 1, 1967, to which he received no reply. Paragraph 3 of the Resolution dated September 15, 1965, under which three months' notice of retirement was given to the petitioner in that case read as under:-

"Notwithstanding anything contained in the foregoing paragraph, the appointing authority may require a Government servant to retire on three months' previous notice in writing without assigning any reason. This power shall be exercised in the case of Government servants who are found to be unsuitable or inefficient for retention in Government service. For this purpose the concerned authorities

should keep constant vigilance on the work of a Government servant continuing beyond the age of 55 years. With a view to ensure uniformity, a notice required to be given by the appointing authority to a Government servant shall be in the form as specified in annexure 1 appended hereto. "

While interpreting this paragraph of the Resolution it was observed:-

"This suggests that the appointing authority may require a Government servant to retire after he attains the age of 55 years on three months" previous notice in writing without assigning any reason. In the said paragraph it is laid down in the same strain that the authorities can exercise the above-mentioned power if they find that such Government servants are in any way unsuitable or inefficient for retention in Government service. Therefore, the criterion to come to a decision for the purpose of exercising the power to retire any person as aforesaid can be exercised only when a Government servant is found to be unsuitable and inefficient for retention in Government Service. That being so, the authority exercising such power to terminate the services of a Government servant after 55 years should have been satisfied from materials before him that the said Government servant was unsuitable or inefficient to be retained in Government service and should have at least directed their attention to a consideration of this matter in the light of the criterion laid down in the above resolution as mentioned above. "

It is thus evident that the Resolution under which action was taken was in different words than the rule in the instant case. In the Orissa case it had been definitely stipulated that the power to retire by giving three months" notice was to be exercised only in the case of Government servants who are found to be unsuitable or inefficient for retention in Government service. In that case, therefore, a finding had to be given that the petitioner was unsuitable or inefficient for retention in Government service. The learned Judges, on the facts of that case, found that the petitioner was neither unsuitable nor inefficient and, therefore, held that he could not be compulsorily retired from service after giving him three months" notice. There is no such requirement in the rule governing the petitioner in the instant case and the observations of the learned Judges in Orissa case are not applicable.

Moreover, the learned Judges relied upon the observations of their Lordships of the Supreme Court in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, , which observations were made in respect of a public servant who had been removed from service. Those observations have been held not to ebb applicable to the case of compulsory retirement by giving three months" notice according to the service rules in a Full Bench judgment of this Court, in *Pritam Singh Brar Vs. State of Punjab and Others*,). In that case the learned Judges held that -

"Rule 3. 26 of the Punjab Civil Services Rules, Vol. I Part I, and R. 5. 32 of the Punjab Civil Services Rules, Vol. II, have to be read together and proper effect

given thereto. Rule 3. 26 cannot be read in isolation and although the language employed therein clearly shows that a Government servant would continue in service upto the age of 58 years, but that right is not absolute and is controlled by the provisions of Rs. 5. 32. "

Rule 5. 32 was held to be perfectly legal and valid. It was further held that -

"If under the rules a public servant is compulsorily retired after a period of qualifying service which is reasonably long even before the normal prescribed age of superannuation, the order would neither amount to dismissal nor to removal within the meaning of Art. 311(2) of the Constitution. "

The learned Judges also observed that the procedure or the instructions issued by the Chief Secretary to Government, Punjab, to all Heads of Departments, on May 19, 1964, laying down principles for the review of the cases of employees due to attain the age of 55 years cannot operate to limit or restrict the operation of the provisions of R. 5. 32. The learned Judges distinguished *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, on the ground that "the question there was of the validity of the rules which authorised removal from service whereas in the present case we are concerned only with compulsory retirement and not removal. " It is thus evident that after attaining the age of 55 years the petitioner did not have any right to the post held by him and if he has been compulsorily retired in terms of the service rules, he can have no grievance.

11. There is no substance in the contention of the learned counsel for the petitioner that there has been a violation of the fundamental rights of the petitioner guaranteed under Arts. 14 and 16 of the Constitution inasmuch as many the persons who had a record similar to or even worse than the petition had been retained in service beyond the age of 55 years while he has been compulsorily retired. The only right that the petition has is to be considered along with others but it isn't open to this Court to scrutinise whether the material before the appointing authority was sufficient to enable it to pass the impugned order. It has been held by a Division Bench of the Mysore High Court, in *M. N. Seshadri Setty v. State of Mysore*, 1967 Ser LR 786 = (AIR 1968 Mys 116), that -

"it is not for us in the exercise of our jurisdiction under Art. 226 of the Constitution to assess the worth of the petition and to investigate whether it is possible on the material before us to substitute for the view taken by the Government our own view to the contrary. It may be possible for us on a proper review of the materials, in a case like the one before us, to form an opinion at variance with that reached by Government. But that would not enable the displacement of the conclusion reached by Government and the substitution of our own. The assessment of the Government Servant's record of service is confided to the authority empowered to grant the extension and of its character, that authority is the sole judge. The adverse opinion formed by Government in the case of the petitioner rested on the confidential reports of the years 1964 and 1965 and neither their sufficiency nor the reasonableness of the exclusion of

the commendation during the earlier and later years is open to discussion by us. "

12. I have reproduced in an earlier part of this judgment para 15 of the return filed by the respondents in which it has been stated unequivocally that the case of the petitioner for extension was thoroughly considered by the competent authority and that his confidential record did not justify further extention in service. The allegation of mala fides or ill-will against the Chief Personnel Officer has been addressed to me on the aspect of mala fides or malice. It is, therefore, not possible for me to hold that in view of the satisfactory record of the petitioner before he attained the age of 55 years he could not have been retired by the respondents by giving him three months" notice in accordance with his service rules.

13. Before parting with these case, I would like to notice a half-hearted argument advanced by the learned counsel for the petitioner, although he seems to have placed it in the forefront at the time the writ petition was admitted, that the notice of three moths given to the pettier was bad as it did not terminate with the date on which he attained the age of 55 years. This submission is without any force as the relevant Rule does not prescribe that the notice must terminate with the attainment of the age of 55 years. All that it provides is that the railway servant must be given at least three months" notice before he is asked to retire after attaining the age of 55 ears and before he attains the age of 58 years. Such a notice can be given at any time but it should not terminate before the date of attaining the age of 58 years. It can be issued before an employee attains the age of 55 years or after attaining that age but the period of notice must terminate after the date of attaining the age of 55 years and before attaining the age of 58 years. I have, therefore, no hesitation in repelling this submission of the learned counsel.

14. No other point has been argued before me.

15. For the reasons given above, I find no merit in this writ petition which is dismissed but in the circumstances of the case I do not wish to burden the petitioner with costs.

16. Petition dismissed.